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*Of Attorneys for Defendant City of Portland*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

DON'T SHOOT PORTLAND, a nonprofit corporation, in its individual capacity, NICHOLAS J. ROBERTS, in an individual capacity and on behalf of themselves and all others similarly situated, MICHELLE "MISHA" BELDEN, in an individual capacity and on behalf of themselves and all others similarly situated, ALEXANDRA JOHNSON, in an individual capacity and on behalf of themselves and all others similarly situated,

**PLAINTIFFS,**

v.

CITY OF PORTLAND, a municipal corporation, and MULTNOMAH COUNTY, a political subdivision of the State,

**DEFENDANTS.**

I, Mark Duarte, declare as follows:

**3:20-cv-00917-HZ**

**DECLARATION OF MARK DUARTE**

**(In Support of Defendant City of Portland's  
Response to Motion for Temporary  
Restraining Order and Preliminary  
Injunction)**

1. I am a City of Portland police officer. I was hired by the Portland Police Bureau (“PPB”) on April 3, 2014. My primary assignment is as patrol officer in Central Precinct, assigned to the Entertainment Detail. The Entertainment Detail primarily responds to calls for police service in the downtown area from bars, taverns and clubs. These calls involve noise disturbances, fights, public intoxication, and other forms of disorderly conduct. My work on the Entertainment Detail can involve aspects of crowd management and control.

2. Since 2017 I have worked on a detached, specialty assignment with PPB’s Rapid Response Team (“RRT”). RRT has an application and selection process. RRT is PPB’s primary specialty group that performs crowd management and crowd control services. Since 2019 my role on RRT has been as a grenadier. As a member of RRT I have received at least 30 to 40 hours of annual In-Service training.

3. As a RRT grenadier, I have been trained in the use of less lethal weapons such as a 40 mm launcher and the FN303. The 40mm launcher is a shotgun-like platform that allows a variety of Riot Control Agents (“RCAs”) to be fired from it. These RCAs can include impact munitions, such as foam tipped impact rounds, marking rounds that contain paint, or Oleoresin Capsicum (“OC”) rounds that contain OC powder that disperse on impact. In addition, the 40mm launcher can be used to launch other RCAs such as smoke (obscurant), 2-chlorobenzalmalononitrile “CS” gas and Oleoresin Capsicum Pyrotechnic (“OC pyrotechnic”). The FN303 is a rifle-like platform that allows small, plastic balls to be fired from it. These balls can contain an active ingredient of 0.5% OC in a powder form and washable paint for marking suspects .

4. In addition to launchable RCAs, grenadiers also carry hand-tossed munitions including canisters of CS gas, OC pyrotechnic, or OC vapor. Grenadiers may also carry rubber ball distraction devices (“RBDDs”). RBDD payloads can vary, and some do not have any payloads at all, and are called inert RBDDs. An inert RBDD delivers only a blast of light and sound. A “live” RBDD delivers a blast of light and sound, but also contains small rubber balls

(approximately .81 cm each) that are dispersed outward in an explosion. An "OC" RBDD delivers a blast of light and sound, but also projects a cloud of OC in outward in an explosion. The rubber ball dispersion during the explosion of a "live" RBDD or an "OC" RBDD radiates horizontally approximately 50 feet.

5. On Saturday, May 30, 2020 and Sunday, May 31, 2020, I was assigned as a grenadier to RRT's Alpha Squad. My shift began at 1700 hours on May 30 and ended approximately 0400 hours on May 31. At some point during my shift, at approximately 2000 hours, I was working in the area of the Multnomah County Justice Center on SW 3<sup>rd</sup> Ave/SW Main St and SW 6<sup>th</sup> Ave/SW Yamhill St. I recall RRT giving commands over its sound truck for people to disperse and leave the area. Multiple persons were throwing objects at me and other members of Alpha Squad. I saw rocks, concrete, metal construction material and glass bottles being thrown at me and the other RRT members. I was struck in the shoulder with a full can of beer. I was hit in the leg with a rock. I saw multiple subjects dressed mostly in dark clothing and wearing masks throw various projectiles at Alpha Squad, including the CS gas canisters RRT was deploying. I hand tossed 1 to 3 canisters of OC chemical agents from 15 to 30 feet to assist in dispersing the crowd. I deployed these hand held munitions in the middle of the intersection to encourage the crowd to stop its hostile behavior and leave. My deployment of these hand tossed RCAs was effective. I then disengaged with the crowd and moved back to my squad to reassess the situation.

6. On this same shift on Saturday, May 30, 2020 and Sunday, May 31, 2020, at some point I was working in the area of the Multnomah County Justice Center on SW 3<sup>rd</sup> Ave/SW Main St. Persons in the crowd had constructed barriers in the street. I saw multiple persons advance towards Alpha Squad and throw projectiles at us. I deployed multiple FN303 marking rounds at 3 to 5 subjects, all of who were actively picking up things, including RCA canisters, and throwing them at Alpha Squad. I estimate that I deployed 24 FN303 marking rounds total at these 3 to 5 subjects. I deployed 2 to 6 rounds at each aggressor until they stopped throwing



things at us and moved away. I was aiming at the lower legs and thigh area of each subject and this was my intended point of impact for the marking round. However, it was difficult to see the point of impact of each FN303 marking round because of distance, the small size of round, the lighting and I was wearing my gas mask. In addition, some persons in the crowd were shining bright lights into my face and other members of Alpha Squad, and other crowd members were acting as "human shields" to provide cover for other crowd members throwing objects at me and Alpha Squad. In any event, I noticed that many of the FN303 rounds were not effective due to the distance of the subject target and these subjects were wearing make-shift body armor or using shields to deflect the rounds.

7. On this same shift on Saturday, May 30, 2020 and Sunday, May 31, 2020, at some point I was working in the area of the Multnomah County Justice Center on SW 3<sup>rd</sup> Ave/SW Main St. I saw multiple subjects dressed in dark clothing and wearing masks throw projectiles at me and the other members of Alpha Squad. Some of those projectiles included gas canisters that RRT was deploying. I deployed approximately 3 to 5 RBDDS to disperse these people throwing projectiles at us. I hand tossed the RBDDs a distance of 25 to 50 feet in the middle of the intersection of the street away from the crowd, to cover a large area and encourage the crowd to stop its hostile behavior and leave. The deployment of the RBDDs was effective.

8. On this same shift on Saturday, May 30, 2020 and Sunday, May 31, 2020, at some point I was working in the area of SW 6<sup>th</sup> Ave/SW Yamhill St. The RRT sound truck had given several dispersal announcements and force warnings. At one point an identified male walked into the street and towards Alpha Squad. He was ordered to get out of the street. The male began running towards the Alpha Squad van. Another officer hand tossed an OC canister at the male, who tried to pick it up and throw it at us. I deployed 2 FN303 marking rounds to prevent the male from picking up and throwing the OC canister. The male was approximately 20 to 30 feet away when I deployed the marking rounds. I aimed for the male's belt line and that was my intended point of impact for the marking rounds.

9. On Tuesday, June 2, 2020 and Wednesday, June 3, 2020 I was assigned to Alpha Squad. My shift began at 1700 hours on June 2 and ended approximately 0400 hours on June 3. At approximately 2300 hours I was working in the area of Pioneer Courthouse Square. The Incident Commander directed RRT to disperse the crowd out of the Square. I deployed a single OC canister towards the middle of the square and away from the crowd to prevent people from accessing it and using it as projectile against us. I had seen persons run towards the OC canisters to disable them with traffic cones, water and/or pick up the canister to throw back at RRT.

10. On this same shift on Tuesday, June 2, 2020 and Wednesday, June 3, 2020, I saw multiple subjects throw projectiles at RRT, which included the gas canisters RRT members were deploying. I deployed a total of 3 CS chemical agents (in combination with OC), to disperse these subjects. This was necessary to encourage the crowd to stop their hostile behavior and to leave.

11. On this same shift on Tuesday, June 2, 2020 and Wednesday, June 3, 2020, I was working in the area of SW 5<sup>th</sup> Avenue and SW Salmon Street. A crowd of people advanced towards me and Alpha Squad. Persons in the crowd were throwing projectiles at us and challenging us with makeshift barricades. I deployed a single canister of CS gas towards the middle of the street to disperse the advancing crowd.

12. On this same shift on Tuesday, June 2, 2020 and Wednesday, June 3, 2020, I saw multiple subjects advancing towards the police and throwing projectiles at me and Alpha Squad. Persons in the crowd had constructed barriers or a "shield wall" with umbrellas as they were throwing projectiles at me and Alpha Squad. I deployed approximately 30 FN303 marking rounds at 5 to 6 people who were picking up and throwing projectiles at us. I deployed approximately 2 to 6 rounds at each aggressor until they stopped. I then dis-engaged and re-assessed for each subject and each deployment. I noticed the FN303 rounds were often not effective due to the distance and/or the subjects were wearing armor or using improvised shields

make by protest signs, umbrellas or skateboards. I was aiming for the belt line of each subject. However, it was difficult to see the point of impact due to the distance, the small size of the FN303 round, the ambient lighting, having my gas mask on, and the smoke and RCA canisters being deployed. Some people were shining bright lights into our faces and acted as human shields to cover the subjects throwing projectiles at me and Alpha Squad.

13. On this same shift on Tuesday, June 2, 2020 and Wednesday, June 3, 2020, I saw a subject throw a projectile and lit a mortar at Alpha Squad. I deployed a volley of FN303 rounds at this person until he stopped and ran away into the crowd. I also saw two unidentified subjects working together to light and throw incendiary devices at Alpha Squad. I saw the red glare of the devices, which appeared to be some sort of flare. One subject lit the flare; the other subject threw it. The flare landed behind our police line. I deployed a volley of FN303 at each of these individuals and they ran further into the crowd. I disengaged and re-assessed after firing at each of the subjects.

14. On Saturday, June 6, 2020 and Sunday, June 7, 2020 my shift began at 1700 hours on June 6 and ended approximately at 0400 hours on June 7. At approximately 2345 hours I was working in the area of SW 4<sup>th</sup> Ave/SW Salmon Street when Alpha Squad confronted a crowd. Some of the people in the crowd were throwing water bottles, bricks, rocks, smoke bombs, and containers, presumably filled with biohazardous and toxic substances. I deployed approximately two RBDDs to disperse the crowd. I deployed the RBDDs in the middle of the intersection, away from the crowd, to cover a large area to encourage the crowd to stop their hostile behavior to RRT and to leave. On this same shift, on June 6, 2020 at approximately 2345 hours, I deployed approximately 6 to 8 FN303 marking rounds at a subject who was throwing projectiles at the police. At approximately the same time, I deployed a single FN303 OC round at another subject who was advancing at the police and providing cover for a subject throwing projectiles at us. I deployed 5 FN303 OC rounds at the person throwing projectiles.



15. On Sunday, June 7, 2020 and Monday, June 8, 2020 my shift began at 1700 hours on June 7 and ended at approximately 0400 hours on June 8. At approximately 2330 hours on June 7 I was working with Alpha Squad near the Justice Center at SW 3<sup>rd</sup> Avenue and SW Main St. Dispersal announcements and force warnings had been given. RRT was directed to push the crowd away west on SW Main St. away from the Justice Center. The crowd was actively throwing projectiles and barricading themselves while remaining in the street. The crowd moved away from impact munitions deployed by another RRT squad, but remained in the area challenging the line of officers and refusing to move despite the sound truck asking people to move and officers ordering them to move. I saw some persons in the crowd using traffic cones, umbrellas and other objects to barricade and remain in the street. People in the crowd were throwing water bottles, rocks, containers filled with presumed biohazardous and toxic substances. I saw a handful of unidentified subjects dressed in all dark clothing and face masks throw projectiles at police officers, including throwing some of the RRT munitions RRT members were deploying. I deployed a single RBDD to disperse the crowd at SW 3<sup>rd</sup> and Main. The crowd was in the middle of the street. I deployed the RBDD in the middle of the intersection away from the crowd to cover a large area to encourage the crowd to stop their hostile behavior and leave. The deployment of the RBDD at SW 3<sup>rd</sup> and Main St. was effective. On the same date and in the area of SW 5<sup>th</sup> Ave/SW Main St. dispersal orders and force warnings continued. A person wearing a green baseball cap and dark clothes threw a projectile with glowing embers at officers. This person continued to pick up and throw the projectile at officers. I deployed a single FN303 OC round at his right leg. I disengaged after the person stopped throwing projectiles.

16. On Wednesday, June 10, 2020 and Thursday, June 11, 2020 my shift began at 1700 hours on June 10 and ended approximately at 0400 hours on June 11. On June 10 at approximately 2330 hours I was deployed with Alpha Squad near the Federal Courthouse. A male was attempted to dismantle the fence along SW Main by the Justice Center. I aimed my

FN303 at a large pillar of the Federal Courthouse that was approximately 6 to 10 feet away from the male trying to dismantle the fence. I launched FN303 OC rounds at the pillar at a slow rate and reassessed after each round to see if it was stopping the subject from dismantling the fence. At first the male ignored the rounds and continued dismantling the fence. Eventually, after I shot approximately 18 rounds at the pillar, the male stopped trying to dismantle the fence and retreated into the crowd.

17. On Saturday, June 13, 2020 and Sunday, June 14, 2020 my shift began at 1700 hours on June 13 and ended at approximately 0400 hours on June 14. At some point during my shift I was deployed with Alpha Squad at SW 3<sup>rd</sup> and SW Couch Street. A crowd had taken fencing from area businesses and was using the fencing to block the street. Persons in the crowd were throwing mortars and other projectiles at the police. It is difficult to remember but I believe I deployed a single RBDD towards the intersection to disperse the crowd and stop the projectiles.. I deployed 2 RBDD at a group throwing projectiles at police on SW 3<sup>rd</sup> Ave/SW Main St. On this same shift, in the area of SW Main and SW 3<sup>rd</sup> Avenue, I saw an unidentified subject wearing black clothing throw projectiles at the police. This person was part of a smaller group of people advancing towards the police and throwing projectiles at us. I aimed for this person's lower legs and shot approximately 4 to 6 FN303 rounds at the person. He retreated into the crowd. On the same shift, in the area of SW 4<sup>th</sup> Avenue and SW Taylor, I saw another unidentified male wearing all dark clothing throwing projectiles at the police. I aimed for this person's lower legs and shot approximately 4 to 6 FN303 rounds at his low legs until he stopped throwing projectiles at us and retreated into the crowd.

18. On Saturday, June 13, 2020 at approximately 2300 hours I was deployed with Alpha Squad at SW 6<sup>th</sup> Avenue and SW Oak Street. A group of approximately 200 people had been ordered to disperse. Some individuals advanced towards the police. Some of the crowd were shining strobe lights in our faces. I saw two persons throw projectiles at the police. I saw a full Gatorade bottle hit Sgt. Pool. I deployed a single RBDD in the street several feet away from



the crowd to stop its advance and stop the projectiles. This same group of approximately 200 people was at NW 5<sup>th</sup> Avenue and SW Oak Street. The group appeared highly coordinated and intent on disregarding dispersal orders. I saw persons in the group were throwing projectiles at us and at Alpha squad member was hit by a projectile. A male on a bike was shining a green laser light in officers' faces. I deployed a single RBDD in the street and several feet away from the crowd to disperse the crowd and stop the projectiles.

19. On Saturday June 13, 2020 and Sunday, June 14, 2020 I used the FN 303 on multiple occasions throughout my shift. These situations involved multiple hostile persons throwing projectiles at the police and shining bright strobe lights and green lasers at my eyes. My vision became blurred momentarily and I was unable to see. This use of force is reflected on my Force Data Collection Report in detail.

20. On Monday, June 15, 2020 and Tuesday, June 16, 2020 my shift began at 1700 hours on June 15 and ended at approximately 0400 hours on June 16. On June 15 at approximately 2315 hours I was deployed with Alpha Squad in the area of SW Salmon St/SW 5<sup>th</sup> Ave. I saw a large, agitated group of people in the street advancing towards police vans. I deployed a single RBDD into the middle of the street to stop the group's advance. On the same shift I saw a white male wearing an orange helmet advance towards RRT's Delta Squad and throw a projectile at the police. I shot two FN303 OC rounds at the male, but the rounds missed him. I shot the rounds to stop the male's advance and to stop him from throwing projectiles.

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21. I make this declaration in support of Defendant City of Portland's Response to Motion for Temporary Restraining Order and Preliminary Injunction.

**I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.**

DATED: \_\_\_\_\_

7/3/2020

  
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Mark Duarte